

DIVERSIFIED OPERATING CORP.

IBLA 89-85

Decided April 15, 1991

Appeal from a decision of the Colorado State Office, Bureau of Land Management, affirming assessment of \$250 for failure to take the corrective action called for in Incident of Noncompliance CO-050-115 within the prescribed time period (SDR-CO-89-2).

Affirmed.

1. Oil and Gas Leases: Civil Assessments and Penalties--Oil and Gas Leases: Incidents of Noncompliance

Violation of the regulation requiring posting of signs on a well within a Federal or Indian lease (43 CFR 3162.6(a)) is a minor violation and BLM may properly assess an operator \$250 for failure to abate a minor violation within the time allowed. 43 CFR 3163.1(a)(2).

APPEARANCES: Terry J. Cammon, Manager of Operations for Diversified Operating Corporation, Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Diversified Operating Corporation (Diversified) has appealed from an October 26, 1988, decision of the Colorado Deputy State Director, Bureau of Land Management (BLM), upholding an October 5, 1988, Canon City District Manager's decision assessing \$250 for failure to take the corrective action set out in Incident of Noncompliance CO-050-115 (INC-115) within the prescribed time period.

Diversified is the lessee and operator of Federal lease COC45114 on which the Federal Wildcat Ranch 3-19 well (FWR C-19 well) is located. On August 22, 1988, the Canon City District Office issued INC-115 to Diversified, citing Diversified for failure to have a well sign posted at the well site, as required by 43 CFR 3162.6(a) (INC-115 at 1). ^{1/} Diversified was directed to "install a proper well sign" and was given "30 days from receipt of this notice" to abate the violation. Id.

^{1/} "Every well within a Federal or Indian lease or supervised agreement shall have a well identification sign. All signs must be maintained in a legible condition."

Diversified received INC-115 on August 25, 1988, and returned the original notice to BLM on September 2, 1988. On the face of the original, in a space below the instruction "[w]hen violation is corrected, sign this notice and return to above address," Diversified's Manager of Operations stated that the "[w]ell sign has been ordered and will be put at wellsite once received." Id.

BLM reinspected the FWR C-19 well on September 30, 1988, and found no sign in place. On October 5, 1988, the Canon City Office, BLM, issued a notice pursuant to 43 CFR 3163.1(a)(2), assessing Diversified \$250 for failure to either abate INC-115 by September 25, 1988, or request an extension of time within which to take corrective action. Diversified pursued State Director Review (43 CFR 3165.3), and on October 26, 1988, BLM's Colorado Deputy State Director issued the decision affirming the assessment of \$250 (SDR-CO-89-2). This appeal ensued.

On appeal Diversified asserts the \$250 assessment is inappropriate given "the gravity of the assessment," noting that INC-115 refers to the violation as minor (Notice of Appeal and Statement of Reasons at 1). Diversified relates that it responded to INC-115 in a timely manner and with every intention of having the sign installed within 30 days of receipt. It admits, however, that the sign had been delivered to the site on October 1 and was not posted until October 2. A \$250 fine for installing a proper well sign a week late is, according to Diversified, "cruel and unusual punishment."

Diversified explains that the reason the FWR C-19 well sign had not been posted sooner was that, on September 9, Diversified received eight other INC notices, all for failure to post proper well signs. It then placed a single order for all of the signs, including the FWR C-19 well sign, and issued instructions to have the signs made and posted by October 6, 1988, which was well within the 30-day compliance period for the notices received on September 9. Diversified maintains that it would have met the INC-115 deadline, but for the fact that it confused the INC-115 notice with other notices issued by BLM's Canon City office. Id. at 2. Diversified notes that the FWR C-19 well is a marginally economic gas well, which is well known to Canon City BLM personnel, as it has received INC notices for other Federal infractions. Diversified states that it has attempted to production test this marginally economic well with major efforts to control costs, and submits that the well cannot withstand other major capital costs, and will be plugged if such work is required by BLM. Id. at 2.

[1] This Board has generally recognized that when a lessee fails to comply with a written order issued by an authorized BLM officer within the time specified in the order, BLM is entitled to assess liquidated damages. Dalport Oil Co., 104 IBLA 327, 329 (1988); Mont Rouge, Inc., 90 IBLA 3, 5 (1985); Willard Pease Oil & Gas Co., 89 IBLA 236, 240 (1985). Thus, if a finding of noncompliance is technically and procedurally correct, a minimum assessment is properly levied, regardless of lessee's subsequent abatement

of the noncompliance condition. William Perlman, 96 IBLA 181, 186 (1987); Mont Rouge, Inc., *supra* at 5-6; Willard Pease Oil & Gas Co., *supra* at 239-41.

Diversified admits that it did not "install a proper well sign" within the prescribed 30-day period. It merely offers an explanation for its failure to accomplish the task in time. The fact that the FWR C-19 well may be marginally economic is of little consequence. The express requirements of 43 CFR 3162.6(a) extend to "[e]very well within a Federal or Indian Lease or supervised agreement," and provide no exception for marginally economic wells.

Diversified's failure to abate the violation within the prescribed time period was a direct result of its failure to properly note the deadline for abating INC-115. Had Diversified properly noted this deadline date, it would have realized that it would be unable to complete the corrective action within the specified period, and could have sought additional time to comply. It is incumbent on the operator to seek an extension when it is unable to complete the corrective action within the time period specified in an INC notice. Dalport Oil Co., *supra* at 330. Diversified could have advised BLM that additional time was needed to comply with the posting requirement set out in INC-115, and sought an extension. BLM properly assessed liquidated damages pursuant to 43 CFR 3163.1(a) when Diversified failed to comply within the specified period and failed to obtain an extension of the period in which to comply.

Turning now to the quantum issue, Diversified's characterization of the infraction as "minor" is entirely accurate. Consistent with this characterization BLM imposed the assessment for failure to comply with a "minor" violation. 43 CFR 3163.1(a) and (a)(2) provide:

Whenever an operating rights owner or operator fails or refuses to comply with the regulations in this part, the terms of any lease or permit or the requirements of any notice or order, the authorized officer shall notify the operating rights owner or operator, as appropriate, in writing of the violation or default. Such notice shall also set forth a reasonable abatement period: * * *

(2) Where noncompliance involves a minor violation, the authorized officer may subject the operating rights owner or operator, as appropriate, to an assessment of \$250 for failure to abate the violation or correct the default within the time allowed.

An appellant is charged with demonstrating error in BLM's decision by a preponderance of the evidence. Diversified has not successfully carried the burden, having failed to show that BLM either lacks the authority to assess the liquidated damages or that the quantum of the assessment was inappropriate.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen
Administrative Judge

I concur:

Gail M. Frazier
Administrative Judge